

Answer by letter-Craft

September 17, 1969

OPINION LETTER NO. 272

Honorable C. W. Culley
Commissioner of Finance
Department of Business
and Administration
Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Culley:

This official opinion is in response to your request for a ruling upon the construction of §362.107, RSMo 1959 relating to separate banking facilities. Your inquiry reads as follows:

"Does the use of the word 'and' as quoted above mean that such facility must be so constructed as to permit walk-up service at a teller's window and also be so situated that customers may engage in the permitted banking transactions while in their automobile at drive-in teller's windows; . . ."

Although you refer in your letter to other questions which have arisen, I understand from our conference that your request for an opinion is limited to the question quoted above.

Section 362.107 provides in part:

"1. Purpose of the section. It is in the public interest that banking institutions be permitted to provide convenient banking service for the large proportion of people who must come to their banks by automobile. In many communities banking institutions are so located as to prevent the establishment of convenient facilities for automobile banking at locations attached to or immediately adjacent to their banking house. It is therefore in the interest of all the general

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public that banking institutions be permitted to provide automobile banking service at one conveniently located facility, separate and apart from its banking house.

"2. (1) Anything in sections 362.105 or 363.170, RSMo, or in any other law of this state to the contrary notwithstanding, every bank and every trust company organized under the laws of this state which has the corporate power to receive deposits shall have the right to, and may, upon compliance with this section, maintain and operate separate and apart from its banking house one facility for drive-in and walk-up service, whereat checks may be paid, deposits received, deposits withdrawn, and change made only."

This section must be read in conjunction with §362.105, RSMo 1959 (1967 Supp.) which sets forth the powers and authority of banks and trust companies. This section provides:

"1. Every bank and trust company created under the laws under this state may:

"(1) . . . provided, however, that no bank or trust company shall maintain in this state a branch bank or trust company, or receive deposits or pay checks except in its own banking house or as provided in section 362.107;"

It is apparent from these two sections that the general assembly has not repealed the prohibition contained in §362.107 against branch banking. Rather, it has made clear in §362.107(1) that the purpose of this section is to allow banking institutions to provide a facility which is designed for the convenience for those persons who wish to utilize the facilities of a banking institution by driving to the institution in their automobile. Consistent with this purpose, § 362.107(2) allows the banking institutions governed by this section to:

". . . maintain and operate separate and apart from its banking house one facility for drive-in and walk-up service, . . ."

By §362.107(3) any bank or trust company which desires to operate a facility pursuant to §362.107 must apply to the Commissioner of Finance for authority to maintain and operate such a facility.

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It seems apparent from an examination of these two sections that a banking institution although not permitted to establish a branch bank, may establish a facility which is designed primarily for the convenience of the automobile driving public. The phrase "one facility for drive-in and walk-up service" should be interpreted consistent with the basic purpose of the act. Therefore, the Act requires that the facility must be primarily designed to serve those persons who come to the bank by automobile. The use of the phrase "walk-up" makes clear that the banking institution need not refuse to provide the services outlined in §362.107 merely because a prospective customer has left his automobile and walked to the bank.

The use of the word "and" in the phrase "drive-in and walk-up service" means that the commissioner may approve a facility which has either "drive-in" service or "walk-up" service so long as the facility is designed for the automobile driving public. Although the facility must be constructed in such a way as to serve the automobile driving public, it is not likely that the legislature intended to rigidly control the type of facility to be constructed. If a bank offers only a walk-up service, it is merely using a portion rather than all of the authority granted. Where a facility serves the automobile driving public by offering convenient parking and immediate access to a public way, the fact that the facility does not have a drive-in window would not require the commissioner to deny the application.

Therefore, it is the opinion of this office that the word "and" means and/or and the commissioner may approve a facility which has either drive-in service or walk-up service or both.

Yours very truly,

JOHN C. DANFORTH
Attorney General